

## Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY TAIPEI PRIORITY

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E.O. 11652: N/A

TAGS: EINV, TW

SUBJECT: PROPOSED PATENT CENSUS BY GROC

SUMMARY: DEPARTMENT HAS LEARNED THAT ROC PLANS TO UNDERTAKE PATENT CENSUS LEADING TO POSSIBLE WIDESPREAD REVOCATION OF PATENTS NOT EXPLOITED IN CHINA. SUCH A MOVE COULD DIMINISH ATTRACTIVENESS OF FUTURE U.S. AND OTHER FOREIGN INVESTMENT IN ROC; AND WOULD CREATE COSTLY AND UNNECESSARY BURDEN FOR U.S. PATENT HOLDERS. EMBASSY REQUESTED TO MAKE APPROPRIATE REPRESENTATIONS TO GROC.

1. DEPARTMENT AND U.S. PATENT OFFICE HAVE BEEN CONTACTED BY INDUSTRY SOURCES (E.G. DUPONT) CONCERNED OVER ANTICIPATED PATENT CENSUS IN TAIWAN. ACCORDING TO INFORMATION RECEIVED, NATIONAL BUREAU OF STANDARDS (NBS), WHICH IS LIMITED OFFICIAL USE

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RESPONSIBLE FOR PATENTS AND TRADEMARKS, PLANS TO QUERY ALL

PATENT HOLDERS REGARDING USE THEY MAKE OF THEIR ROC PATENTS IN ORDER TO WEED OUT THOSE PATENTS WHICH ARE NOT WORKED IN TAIWAN.

2. BASIS FOR ANNOUNCED PATENT CENSUS REPORTED TO BE ARTICLE 67 OF ROC PATENT LAW WHICH STATES: QUOTE. WHERE, IN THE ABSENCE OF PROPER REASONS, A PATENTED INVENTION HAS NOT BEEN PUT INTO PRACTICE, OR HAS NOT BEEN PROPERLY PUT

INTO PRACTICE, IN THIS COUNTRY WITHIN THREE YEARS FROM THE DATE OF GRANTING OF THE PATENT, THE PATENT OFFICE MAY, ON ITS OWN INITIATIVE, REVOKE THE PATENT RIGHT, OR UPON THE REQUEST OF ANY INTERESTED PARTY, GRANT SPECIAL PERMISSION TO SUCH PARTY FOR PUTTING IT INTO PRACTICE AND SHALL MAKE COMPENSATION TO THE PATENTEE. IN CASE OF ANY DISPUTE OVER THE AMOUNT OF SUCH COMPENSATION, IT SHALL BE DECIDED BY THE PATENT OFFICE. UNQUOTE.

3. USG AND INDUSTRY CONCERNED THAT ANNOUNCED PATENT CENSUS MAY PRECEDE STRICTER INTERPRETATION AND ENFORCEMENT OF THE REVOCATION SECTION OF ARTICLE 67, POSSIBLY INCLUDING LARGE-SCALE CANCELLATION OF PATENTS FOR NON-WORKING. COMPLIANCE WITH REQUIREMENTS OF PATENT CENSUS COULD LEAD TO CONSIDERABLE BURDEN AND EXPENSE FOR FOREIGN OWNERS OF ROC PATENTS. MORE IMPORTANT TO ROC, HOWEVER, WE ARE CONCERNED THAT ANY WIDESPREAD CURTAILMENT OF EXISTING PROPERTY RIGHTS, OR THE THREAT OF SUCH CURTAILMENT, COULD SERVE AS A DISINCENTIVE TO FUTURE U.S. OR OTHER FOREIGN INVESTMENT IN ROC.

4. WHILE WE ARE SYMPATHETIC TO ROC'S DESIRE TO INSURE THAT THEIR PATENT LAWS DO NOT PERMIT SOME UNWORKED PATENTS TO THWART INDUSTRIALIZATION, DECISIONS BY OWNERS NOT TO WORK THEIR PATENTS MAY REST ON A VARIETY OF REASONABLE ECONOMIC GROUNDS. THE LIMITED MARKET WOULD NOT JUSTIFY A LARGE INVESTMENT IN COSTLY PRODUCTION FACILITIES IN MANY CASES AND SPACE LIMITATIONS WOULD PROHIBIT THE ESTABLISHMENT OF ALL FACTORIES NECESSARY TO WORK THE THOUSANDS OF EXISTING PATENTS.

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5. IF ROC BELIEVES THAT NON-WORKING OF FOREIGN-OWNED PATENTS CREATES OBSTACLES TO DEVELOPMENT, IT WOULD BE FAR PREFERABLE TO UTILIZE COMPULSORY LICENSING PROVISIONS OF ARTICLE 67, RATHER THAN TO TERMINATE PATENT ALTOGETHER. THE GENERALLY ACCEPTED INTERNATIONAL PRACTICE IN THIS AREA IS EMBODIED IN ARTICLE 5A(3) OF THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY, WHICH PERMITS PATENT REVOCATION FOR NON-WORKING ONLY AFTER GRANT OF A

COMPULSORY LICENSE. CONVENTION ALSO PROVIDES FOR 3-YEAR GRACE PERIOD BEFORE COMPULSORY LICENSE MAY BE GRANTED. SOME 80 COUNTRIES (BUT NOT TAIWAN) ARE MEMBERS OF THIS CONVENTION. IT SEEMS THAT THE CURRENT LAW SUFFICIENTLY FLEXIBLE TO PERMIT ACHIEVEMENT OF TAIWAN'S INDUSTRIALIZATION OBJECTIVES IN A SIMILAR FASHION, AND WITHOUT ISSUANCE OF ONEROUS CENSUS AND WIDESPREAD REVOCATION OF PATENTS. WHERE A PATENT IS BLOCKING COMMERCIAL DEVELOPMENT ON THE ISLAND, ARTICLE 67 ITSELF APPEARS TO PROVIDE FOR COMPULSORY LICENSING WHERE AN INTERESTED PARTY

IS IN A POSITION TO ACTUALLY WORK THE PATENT. CANCELLATION OF MANY EXISTING PATENTS BY THE NBS WITHOUT REFERENCE TO COMMERCIAL REALITIES MAY REDUCE PROSPECTS FOR FUTURE LICENSE ARRANGEMENTS WHICH WOULD BE PARTICULARLY UNDESIRABLE IN GREAT MAJORITY OF CASES WHERE ASSOCIATED KNOW-HOW OWNED BY THE LICENSOR IS ESSENTIAL IN PRACTICING THE PATENTED SUBJECT MATTER.

6. EMBASSY AWARE THAT RECENT EFFORTS TO CANCEL NBS TRADEMARK CENSUS WERE UNSUCCESSFUL. THEREFORE IT APPEARS THAT IN CASE OF PATENT CENSUS, INITIAL REPRESENTATIONS SHOULD BE MADE AT THE HIGHEST LEVEL OF MINISTER OF ECONOMICS AFFAIRS WHICH HAS JURISDICTION OVER NBS. MINISTER OF ECONOMICS Y. S. SUN WOULD APPEAR TO BE APPROPRIATE OFFICIAL. AS REGARDS TRADEMARK CENSUS PROBLEM, IN ADDITION TO DR. NING, APPROACHES WERE ALSO MADE TO VICE MINISTER K. S. CHONG BUT TO NO AVAIL.

7. DEPARTMENT UNDERSTANDS THAT NBS HAS STATED REPEATEDLY THROUGH ROC MASS COMMUNICATIONS MEDIA THAT PATENT CENSUS WILL BE UNDERTAKEN THIS YEAR. THEREFORE, IMMEDIATE EMBASSY ACTION REQUIRED BEFORE ANY OFFICIAL FORMAL ACTION LIMITED OFFICIAL USE

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TAKEN.

8. ACTION REQUESTED: IN VIEW OF FOREGOING INFORMATION AND UNLESS SIGNIFICANT OBJECTIONS PERCEIVED, EMBASSY REQUESTED TO MAKE REPRESENTATIONS TO ECONOMIC AFFAIRS MINISTER Y. S. SUN REGARDING PROPOSED PATENT CENSUS. REPRESENTATION SHOULD UNDERSCORE THE UNPRECEDENTED NATURE OF SUCH A CENSUS WHICH WOULD CREATE AN UNNECESSARY, COSTLY AND COUNTERPRODUCTIVE BURDEN ESPECIALLY IN VIEW OF FACT THAT EXISTING CHINESE LAW DOES NOT PERMIT A PATENT TO STIFLE DEVELOPMENT; LAW CLEARLY PROVIDES OPPORTUNITIES FOR DOMESTIC ENTERPRISES TO CONTRIBUTE TO TAIWAN'S DEVELOPMENT BY UTILIZING UNWORKED PATENTS THROUGH COMPULSORY LICENSING. EMBASSY REPORT ON ACTION TAKEN WOULD BE APPRECIATED SOONEST IN VIEW OF IMPORTANT U.S. INDUSTRY

INTEREST IN THIS MATTER. COMPLETE COPIES OF BACKGROUND  
CORRESPONDENCE BEING POUCHED JAN. 23. SISCO

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